

STEPHEN A. ZAPPALA, JR.
DISTRICT ATTORNEY



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County of Allegheny

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Ronald A. Johnson
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PO Box 999
1120 Pike Street
Huntingdon, PA 16652

August 31, 2015

In re: Open Records Appeal

Dear Mr. Johnson:

I am the Open Records Appeals Officer for the District Attorney of Allegheny County. On August 25, 2015 I received from you an appeal of a denial of a Right To Know Request. That denial was from the District Attorney of Allegheny County. In your request you were seeking:

1. The name and report of the Assistant District Attorney who approved the mobile tracking warrant for Officer William Kelsch of the City of Pittsburgh Police Department; a copy of agreement with the FBI to hold disclosure of the cell site simulator; and copy of the agreement to withhold it in police reports.

Allegheny County, through Kevin F. McCarthy, Esquire, Open Records Officer denied your request based on "Section 708 (b)(16)" of the Right To Know Law.

As you know, 65 P.S. §67.708 (a)(16) exempts from disclosure:

(16) A record of an agency relating to or resulting in a criminal investigation, including:

* * * *

(ii) Investigative materials, notes, correspondence, videos and reports.

* * * *

(vi) A record that, if disclosed, would do any of the following:

(A) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

As the Office of Open Records explained in *Jones v. Pennsylvania Game Commission*, OOR Dkt. AP 2009-0196 records pertaining to a closed criminal investigation remain protected because Section 708(b)(16) expressly protects records relating to the result of a criminal investigation and thus remain protected even after the investigation ends. See also, *State Police v. Office of Open Records*, 5 A.3d 473 (Pa. Cmwlth. 2010); *Sherry v. Radnor Twp. School District*, 20 A.3d 515 (Pa. Cmwlth. 2011).

As a result, I must decline your request. Please be advised that pursuant to Section 1302 you have 30 days to appeal my decision to the Court of Common Pleas of Allegheny County.

Very truly yours,

Michael W. Streily
Deputy District Attorney
Open Records Appeals Officer

cc: Mr. Kevin F. McCarthy, Open Records Officer